IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.453/2004

Decided on.27.7.2007

Shankar Lal **…Petitioner.**

Versus

Union of India and others. **…Respondents**

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]*.No.*

For the petitioner : Mr. R.K. Bawa, Sr. Advocate with Mr. Inderjit Singh, Advocate.

For the respondents Mr. Sandeep Sharma, Assistant Solicitor General of India.

Rajiv Sharma, J.

The brief facts necessary for the adjudication of the present petition are that the petitioner was enrolled in the Army (The Dogra Regiment) on 28th October, 1950. He was invalided out from service in low medical category 'EEE with effect from 23rd September, 1955 by the medical board held at Military Hospital Aundh on 18th July, 1955. The proceedings of the medical board were approved by ADMS Bombay Area on 25th July, 1955. He was discharged from service on completion of 4 years 331 days as a case of pulmonary tuberculosis under item (iii) of the table annexed to Rule 13 (3) of Army Rule, 1954. His disability was assessed at 100% and was regarded as attributable to military service by Invaliding Medical Board. He was granted disability pension for the period from 24th September, 1955 to 12th February, 1963. He was again brought before the Re-survey Medical Board at Military Hospital Ambala Cantt vide

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? yes..

Records The Dogra Regiment letter dated 10th December, 1962 and his disability was assessed at less than 20% (11-14%) by the Medical Board held on 23rd January, 1963. He preferred a petition for continuation of his disability pension on 5th December, 1972, 22Januay, 1988, 12th February, 1989, 29th August, 1998, 27th January, 1999 and 1st March, 2000. The last communication sent by the petitioner was on 10th September, 2002.

Mr. R.K. Bawa, Sr. Advocate had strenuously argued that his case is squarely covered by the judgment of the Punjab and Haryana High Court in ***Gurnam Singh Versus Union of India*** reported in 1995 (4) SCT 278.

Mr. Sandeep Sharma, Assistant Solicitor General of India had supported the decision of the authority whereby the disability pension of the petitioner was discontinued.

I have heard the learned counsel for the parties and perused the record.

It is admitted case of the parties that the petitioner was invalided out of army service with effect from 23rd September, 1955 and his disability was assessed at 100%. Thereafter the petitioner was again brought before the Re-survey Medical Board along with medical documents at Military Hospital Ambala Cantonment vide letter dated 10th December, 1962 and the disability of the petitioner was assessed at less than 20% (11 to 14%).

Mr. Sandeep Sharma submitted that the Re-survey Medical Board proceedings of the petitioner along with the disability pension claim were forwarded to the Controller of Defence Accounts (Pension) G-3 Section, Allahbad vide Reocrds The Dogra Regiment letter No. RCP2/1194/3941403/REASS dated 19th February, 1963 but the same was rejected by the CDA (P), Allahabad vide letter dated 18th March, 1963..

Mr. R.K. Bawa, Sr., Advocate had placed on record copy of letter dated 23rd December, 1992 dealing with the disability pension. The relevant portion of letter dated 23rd December, 1992 is reproduced as under:

> **"There appears to exist some misapprehension that service element will be continued for life even the accepted degree of disablement fall short of 20%. The factual rule position is given below:**
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> **The disability pension constitutes two elements (i) service element and (ii) disability element. The disability element, is payable for a limited period as notified in the pension payment order(s) notified from time to time unless it is notified for life. However, the service element of disability pension is payable for life only in respect of such individuals who were retired/discharged from service or invalided out of service as under:**
>
> **(i) Individuals invalided out of service before 01.03.68 with 10 years or more service.**
>
> **(ii) Individuals invalided out of service on or after 1.3.68 but before 31.12.72 with more than 5 years or more service.**
>
> **(iii) Individuals invalided out of service on or after 1.1.73 with any period of length of service.**
>
> **In view of the above provisions, the pension disbursing authorities in the case of individuals at item (i) and (ii) above shall make payment of service element of disability pension for life only where it is specifically notified by the Controller of Defence Accounts (Pensions) in its Pension Payment Order and in the absence of such specific authorization for life, the service element shall be payable only for the period for which disability element is authorized."**

Mr. R.K. Bawa, Sr. Advocate had submitted that validity of letter dated 23rd December, 1992 had been gone into by the Punjab and Haryana High Court in ***Gurnam Singh Versus Union of India*** reported in 1995 (4) SCT 278. He contended that the Punjab and Haryana High

Court had categorically laid down that all the persons, who have been granted the disability pension constitute a homogenous class and could not be discriminated against for the purpose of disability pension only on the basis of length of service. He had further elaborated his submission by stating that as per letter dated 23.12.1992 the persons enrolled after 1.1.1973 are granted the pension even if their disability has become less than 20% but the persons who had been invalided out in the year 1962 are required to put in minimum 10 years of service. The Punjab and Haryana High Court has held that the persons, who are recruited before 1.1.1973 are to be treated at par with those persons, who have been recruited after 1.1.1973 for the purpose of payment of disability pension.

The Punjab and Haryana High Court has held in ***Gurnam Singh Versus Union of India,*** 1995 (4) SCT 278 as under:

> **"From the documents which have been placed on record, it is clear that the petitioner was discharged from the military service on the ground of low medical category. He was given medical category 'EEE' at the time of discharge from the service. Annexure P-2 is conclusive proof of the fact that the petitioner was given disability pension. This disability pension must have been given to the petitioner on fulfillment of the conditions enumerated in Regulations 173 of the Pension Regulations. By virtue of order (Annexure P-5) the Government of India took a policy decision to extend the benefit of the disability pension to the Army personnel below the officer rank who were granted disability pension at one time but whose disability fell below 20 per cent at a later stage. Annexure P-6 contains similar instructions regarding the grant of disability pension of those whose disability falls below 20%. However, the instructions contained in Annexure P-6 have been made applicable only to those who were on the effective strength of the Army on 1.1.1973. If the petitioner has been discharged from the service after 1.1.1973, he would have become entitled to the grant of disability pension**

notwithstanding the fact that his disability was subsequently reduced below 20 per cent. Therefore, now it has to be seen whether the restricted application of the instructions contained in Annexure P-6 has got any rationality. There can be no manner of doubt that the petitioner was in receipt of the disability pension as on 1.1.1973 and he continued to draw the disability pension upto 20.8.1974. Some of the Army personnel who were discharged from service after 1.1.1973 and who were given disability pension after 1.1.1973 were placed at par with the petitioner. With reference to the object of giving the benefit of disability pension to those whose disability fell below 20 per cent, the petitioner and others who were discharged after 1.1.1973 continued one class. With reference to the object aforementioned, there could be no rationales of confining the benefit of the disability pension only to those who were discharged after 1.1.1973. The entire object of extending the benefit of the disability pension even after the reduction of the disability pension even after the reduction of the degree of disability will be frustrated in the cases of the persons like the petitioner, who was actually in receipt of the disability pension on 1.1.1973 but whose disability fell below 20 per cent after 1.1.1973 are denied benefit of disability pension. To me, fixation of the date as 1.1.1973 has absolutely no nexus with the object of granting the disability pension to those who were initially having the disability of 20 per cent or more but whose degree of disability reduced at a later point of time. To this extent the provisions contained in Annexure P-6 are liable to be declared as unconstitutional.

In the result, the writ petition is allowed. The following expression in the order Annexure P-6 is declared ultra vires to Article 14 of the Constitution:-

> **"These orders will take effect from 1st January, 1973 i.e. these will apply to all those who were on the effective strength of the Army on that date and who became non-effective thereafter.**

The respondents are directed to give benefit of the disability pension to the petitioner as had been given to those who have been discharged from the service after 1.1.1973."

In view of the judgment of the Hon'ble Punjab and Haryana High Court, petitioner is entitled to disability pension even if his disability was assessed at less than 20% as per the Re-survey Medical Board convened on 23.1.1963.

Accordingly the writ petition is allowed. The respondents are directed to give the benefit of disability pension to the petitioner as has been granted to those who have been discharged from service after 1.1.1973 with effect from 13th February, 1963 onwards. The arrears of the disability pension will be calculated and paid to the petitioner by the respondents within a period of 2 months from today. There shall be no order as to costs.

(Rajiv Sharma), Judge

July 27, 2007
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